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ARIZONA ATTORNEY GENERAL

Opinion No. 63-4-L

R-106

November 27, 1962

REQUESTED BY: J. C. EVANS, Secretary
Live Stock Sanitary Board

OPINION BY: ROBERT W. PICKRELL
The Attorney General

- QUESTIONS: 1. Does the Live Stock Sanitary Board have the power to pass a regulation prohibiting the sale of pork sausage, breakfast sausage, bologna, liverwurst, weiners and the like, containing more than $7\frac{1}{2}\%$, individually or collectively, of cereal, vegetable starch, starchy vegetable flour, soy flour, non-fat dry milk or dry milk?
2. If the Live Stock Sanitary Board does have the power to pass such a regulation, can the Board enforce the regulation against retailers?
3. If the Board can pass the above regulation, can the Health Department, by authority of the Pure Food Control Act, Chapter 8, Title 36, of the Arizona Revised Statutes, enforce the regulation against retailers?

- ANSWERS: 1. No.
2. No.
3. No.

In respect to the power of the Live Stock Sanitary Board to pass a regulation pertaining to the percentage of cereal, etc., in sausage, bologna and similar products, the Board is an administrative tribunal whose authority is limited by the express provisions of the statutes relating to it. Thus, the power of the Board is determined by the scope of the purpose the Legislature specifies for the creation of the Board and the standards the Legislature declares for the rules and regulations passed by the administrative tribunal. See Duncan v. Krull Co., 57 Ariz. 472, 476, 114 P.2d 888 (1941); State v. Marana Plantations, 75 Ariz. 111, 114, 252 P.2d 87 (1953).

The general powers and duties of the Live Stock Sanitary

Board are stated in A.R.S. §24-104, which provides:

"§24-104. General powers and duties

A. The livestock sanitary board shall:

1. Exercise general supervision over the livestock interests of the state, protect the livestock industry from theft and from contagious and infectious diseases, and protect the public from diseased and unwholesome meat products.

2. Recommend legislation fostering the livestock industry and advise the legislature with respect thereto. . . ."

Paragraph "B" of §24-104 specifies the power of the Board to make rules and regulations by and with the advice of the state veterinarian. The scope of this authority covers making rules and regulations to prevent spread of contagious or infectious diseases and similar health measures. Nothing in Paragraph "B" grants to the Board the power to state percentages of ingredients in certain meat food products.

Paragraph "C" is a general grant of power to the Board and states the Board "shall prescribe and enforce rules and regulations in conformity with this title."

Possibly relevant sections of Title 24, in addition to §24-104, concerning the power of the Board to make the above regulations, are §§24-614, 24-621(A), 24-621.05, 24-637 and 24-639.

Section 24-621(A) creates the office of chief veterinary meat inspector, whose duties are:

". . . to supervise the state meat inspection service, enforce and efficiently carry out the provisions of this chapter, so as to assure the public that only pure and wholesome meats are offered for sale." (Emphasis added).

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for sale," is consequently one of the purposes of Chapter 4, Title 24, in which §24-621 is contained.

Section 24-621.05 grants the power of the Board to adopt reasonable rules and regulations, upon the advice of the chief veterinary meat inspector "to carry out the purposes of this chapter." The standard for these rules and regulations is specified as follows:

"The rules and regulations shall conform so far as possible to the rules governing meat inspection of the United States department of agriculture, but in no case shall the rules and regulations exceed the requirements of the United States department of agriculture."

The standard thus laid down by our Legislature of the requirements of the United States Department of Agriculture is the maximum standard the Board may adopt. A less stringent standard is permitted by §24-621.05.

Whereas the purpose to assure the public that only pure and wholesome meats are offered for sale seems to relate to the healthful and sanitary condition of meats, it is possible to infer that such a purpose includes specifying the percentage of ingredients of meat food products for public consumption. However, the Legislature, in §24-601, distinguishes between "meat" and "meat food product." While "meat" pertains to the edible parts of a specified animal, "meat food product" pertains to food "which is derived or prepared, in whole or in substantial and definite part, from any portion" of a specified animal. Consequently, because the Board has a specified purpose to assure the public of pure and wholesome meats, it does not necessarily follow that the Board similarly has the power to regulate the purity of food such as sausage or bologna, which come under the category of meat food products.

Another possibly relevant section granting the Board the power to control the percentage of ingredients of certain meat food products is §24-637. Yet, Paragraphs "D" and "E" are the only parts of this section which might have relevance and they respectively prohibit the inclusion in meats or meat food products of "any non-edible materials or foreign objects" that would otherwise make the food unfit for human consumption, and

also prohibit the mixture of an inspected meat or meat food product with a non-inspected meat or meat food product. Therefore, though the section is entitled, "Requirements for processed, blended, or prepared meat and meat food products," the section does not grant authority to the Board to specify the ingredients of a meat food product, all of which ingredients would be edible.

Another possible grant of authority to the Board for specifying the ingredients of sausage or the like might be implied from §24-601, defining a meat food product, and §24-621.05, granting the Board the power to make rules and regulations to carry out the purposes of Chapter 4. Thus, the Board could specify the ingredients of every meat food product offered for sale. However, §24-614 states that nothing in certain sections, which includes §621.05, shall "modify or repeal" any provision relating to adulteration or misbranding in the Pure Food Control Act, Chapter 8, Title 36. Section 36-901 of Chapter 8 Title 36, states, "'Standard of purity of food' means the standard prescribed by the Secretary of the United States department of agriculture." This standard is not the maximum, but is the minimum standard.

This standard of purity of food, as laid down by the Secretary of the United States Department of Agriculture, refers to the same standards as specified in §24-621.05. Thus, if the Live Stock Sanitary Board should make any rule or regulation less strict than the United States Department of Agriculture standard, it would be authorized for such an act under §24-621.05, but such a rule or regulation would conflict with the standard enforced by the Public Health Department as specified in §36-901. Section 36-902(A)(1) provides that a food is adulterated if it does not come up to the standard of purity which is defined in §36-901. Section 36-904 prohibits the sale of such adulterated food. Therefore, for the Board to prohibit the sale of meat food product which does not contain a percentage of ingredients as strict as that of the United States Department of Agriculture, the Board's rule would conflict with the specified power of the Health Department contained in §§36-901, 36-902 and 36-904. Consequently, such rule or regulation of the Board would be prohibited by §24-614. The proposed regulation of the Board calls for a meat food product containing up to 7½% cereal, etc., whereas the United States Department of Agriculture standard prohibits more than 3½%.

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The Legislature could have granted general power to control purity of all foods to the Health Department except for a particular category of food such as meats and then grant control of the ingredients of meats to the Live Stock Sanitary Board. However, the Legislature has instead granted to the Health Department the power over all foods in respect to their standard of purity and has expressly denied the Live Stock Sanitary Board any authority to infringe upon the Health Department's authority in this area.

In answer to Question No. 2 concerning the enforcement of the proposed regulation against retailers, §24-639 expressly exempts retailers from coming under the provisions of Chapter 4 with two exceptions: (1) licensing requirements; and (2) retailers engaging in slaughtering particular animals.

In answer to Question No. 3, if the Board were to pass the above regulation, the regulation would be less strict than the standard of purity of the United States Department of Agriculture and consequently conflict with §36-901(4). Because of the express prohibition in §24-614 against modifying any provision of the Pure Food Control Act, relating to adulteration, the Board's proposed regulation could not be enforced by the Health Department.

The best course of action for the Board, therefore, is to pursue its power granted in §24-104(A)(2) to "recommend legislation fostering the livestock industry and advise the legislature with respect thereto."

Robert W. Pickrell
ROBERT W. PICKRELL *by wife*
The Attorney General

RWP:DML;lf:vbk